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January 16, 1974

): Lawrence S. Blend, Chief Operations Division

ROM: Michael A. Brown, General Counsel

JBJECT: Duties of Army & Air Force Exchange Services under section 15(b)

This is in reply to your memorandum of September 19, 1973 in which you inquired whether organizations such as the Army and Air Force Exchange Service are subject to the reporting requirements of section 15(b) of the Act.

It is the opinion of this office that the Army and Air Force Exchange Service, to the extent that it is a manufacturer, distributor or retailer of consumer products, is subject to section 15 of the Consumer Product Safety Act. There is no exception written into the Act for the military exchange service. Further, section 18 of the Act which provides in relevant part that "this Act shall apply to any consumer product manufactured for sale, offered for sale, or sold for shipment to any installation of the United States located outside of the United States" makes it clear that products sold by the military exchange overseas are subject to the provisions of the Act.

In the event that the exchange service fails to comply with the requirements of section 15(b) of the Act, section 19(a)(4) is applicable. That section makes it unlawful for any person to fail to furnish information required by section 15(b). Any person who violates section 19 may be subject to both civil and criminal penalties.

Since the post exchange has been found by the Supreme Court to be an arm of the governmnet deemed by it essential for the performance of governmental functions, (Standard Oil Co. of California v. Johnson, 318 U.S. 481 (1942) it may be immune from suit. If this is so the Commission would be unable to successfully sue to enforce the provisions of section 15 of the Act. Nevertheless, the Army and Air Force is not exempt from the requirements of section 15(b) and should be so advised.

Please keep me advised of any further developments in this matter.

ASchoem:jh 1-16-74
cc: Schoem
gc file
cc chron
gc reading